

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TEXACO CALIFORNIA INC., and
TEXACO EXPLORATION AND
PRODUCTION INC.,

Defendants.

CONSENT DECREE

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), is concurrently filing a Complaint initiating this action against Texaco California Inc. ("TCI") and Texaco Exploration and Production Inc. ("TEPI") (hereinafter sometimes referred to jointly as "Defendants");

WHEREAS, the United States alleges that Defendants constructed and operated oil wells and oil storage and shipping tanks at the Kern River and Midway-Sunset Oil Fields in western Kern County, California (the "Facilities" as defined in Paragraph 6(a)), in violation of the Clean Air Act (the "Act"), the federally-approved and federally-enforceable California State Implementation Plan ("SIP"), and permits issued by the EPA and/or the San Joaquin Valley Unified Air Pollution Control District ("SJVUAPCD" or "the District");

WHEREAS, Defendants dispute and deny that the operations of the Facilities are in violation of the Act, the SIP, or any permits issued by EPA or the District for the Facilities;

WHEREAS, this Consent Decree does not constitute an admission of either any facts or liability by TCI or TEPI;

WHEREAS, in a letter dated January 11, 2000, to the California Energy Commission ("CEC") and in oral comments to the CEC on January 13, 2000, EPA objected to the certification of compliance issued by the Sunrise Cogeneration Company and to the District's Determination of Compliance submitted to the California Energy Commission in connection with the proposed Sunrise Cogeneration facilities;

WHEREAS, the entry of this Consent Decree resolves the issues raised by EPA in its letter to the CEC dated January 11, 2000, and oral comments to the CEC on January 13, 2000;

WHEREAS, EPA and TEPI agree to work cooperatively with the District to amend Permit Nos. SJ76-4, SJ76-6, SJ76-27, SJ76-38, SJ77-09, SJ77-20, SJ77-56, SJ78-15, SJ78-32, SJ78-63, and SJ78-87 to conform those permits to current operating conditions in the Kern River Oil Field; and

WHEREAS, the parties have agreed that settlement of the civil judicial claims as alleged in the Complaint is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate way to resolve this action;

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND PARTIES BOUND

1. This Court has jurisdiction over the subject matter of this action pursuant to 28

U.S.C. §§ 1331, 1345, and 1355 and 42 U.S.C. § 7413(b). This Court also has personal jurisdiction over Defendants. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), and 42 U.S.C. § 7413(b). The Complaint states a claim upon which relief may be granted against TCI and TEPI pursuant to 42 U.S.C. § 7413(b). Notice of the commencement of this action has been given to the State of California through the California Air Resources Board and the SJVUAPCD. Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter, enforce, modify, or terminate this Consent Decree.

2. This Consent Decree shall apply to and be binding upon Defendants and their successors and assigns, and on the United States on behalf of EPA.

3. If Defendants transfer any ownership interest or right to operate either or both Facilities, including but not limited to the sale, lease, or licensing of others to operate all or part of the Facilities, Defendants shall give notice of this Consent Decree to any successor in interest prior to such sale or transfer. Defendants shall send a copy of such written notification to EPA prior to such sale or transfer. Unless this Consent Decree has been terminated prior thereto, upon sale or transfer of such Facility or Facilities, Defendants shall attach a copy of this Consent Decree to the agreement by which such Facilities are sold or transferred, and shall make performance of the obligations of seller(s) or transferor(s) under this Consent Decree an obligation of any purchaser or transferee. Transfer of ownership of the Facilities, however, will not relieve TCI or TEPI from the obligations of this Consent Decree.

II. CIVIL PENALTY

4. After the entry of this Consent Decree and within 10 days of the receipt of the Electronic Fund Transfer procedures described in Paragraph 5, Defendants shall pay to the United States a civil penalty of FIVE HUNDRED SIXTY EIGHT THOUSAND DOLLARS (\$568,000), plus interest from the date of March 31, 2000, through the date of payment. For purposes of this Paragraph, the rate of interest shall be 6.2% per annum.

5. Payments under this Consent Decree shall be made by Electronic Fund Transfer ("EFT") to the U.S. Treasury according to current United States EFT procedures. The United States shall provide a copy of current EFT procedures to Defendants pursuant to Section VIII (Notification) of this Consent Decree. Concurrently with the electronic funds transfer, Defendants shall fax notice of payment to the person designated as "Point of Contact" on the EFT transfer instructions, and shall send notice of payment to EPA and the United States Department of Justice ("DOJ") at the addresses listed in Section VIII (Notification). The notice of payment shall identify: (1) the date and amount of money transferred; (2) the name and address of the transferring bank; (3) this case by name; (4) the civil action number; (5) USAO File Number 2001V00256; (6) DOJ #90-5-2-1-07326; (7) this Consent Decree (including date of entry); and (8) a description of the reason for the payment (including Paragraph numbers of this Consent Decree that are most relevant to the payment).

III. INJUNCTIVE RELIEF

6. Definitions.

(a) "Effective Date." The Effective Date of this Consent Decree is the date of entry of the

Consent Decree by the Clerk of the United States District Court for the Eastern District of California.

(b) "Facilities." For purposes of this Consent Decree, the term "Facilities" is defined as TEPI's Kern River Oil Field and TCI's Midway-Sunset Oil Field located in Kern County, California.

(c) "Breakdown Condition." A Breakdown Condition means any unforeseeable failure or malfunction of any air pollution control equipment or related operating equipment, which causes a violation of any emission limitation or restriction prescribed by federal, state, or local law, rules, regulations, or permits, in which such failure or malfunction:

(i) Is not the result of neglect or disregard of any air pollution control law, rule or regulation; and

(ii) Is not intentional or the result of negligence; and

(iii) Is not the result of improper maintenance; and

(iv) Does not constitute a nuisance; and

(v) Is not a recurrent breakdown of the same equipment.

7. Compliance Plan for Kern River Oil Field: TEPI has submitted permit applications to the District, seeking authorization to install vapor control devices to achieve 99 percent control of volatile organic compound ("VOC") emissions from all front line tanks with a capacity greater than 100 barrels at the Kern River Oil Field that accept crude oil produced from wells that are not equipped with well head casing vapor recovery. By April 15, 2001, TEPI shall submit revised permit applications to the District, seeking authorization to install vapor control devices to achieve 99 percent control of VOC emissions from the two shipping tanks in Station 36. TEPI shall comply with the deadlines set forth in this Paragraph for permitting, installing, operating, and testing the vapor control equipment on these oil storage tanks at the Kern River Oil Field. TEPI shall operate its shipping tanks in Station 36 and front line tanks to comply with the emission limits of Paragraph 7, and the permit(s) it obtains from the District. If TEPI is required to install vapor controls on its second line wash and settling tanks at Station 36, TEPI shall operate its second line wash and settling tanks in Station 36 to comply with the emission limits of Paragraph 7, and the permit(s) it obtains from the District.

(a) Within 10 days after the Effective Date of this Consent Decree or within 10 days after the permit applications are filed, whichever is later, TEPI shall provide to EPA pursuant to Section VIII (Notification) of this Consent Decree a copy of TEPI's permit applications for the vapor control devices on the tanks referenced in Paragraph 7.

(b) By April 15, 2001, TEPI shall submit permit applications to the District in accordance with SJVUAPCD requirements, seeking authorization to implement a leak detection and repair ("LDAR") program in accordance with the provisions of Attachment A to this Consent Decree. A copy of TEPI's permit applications shall be provided simultaneously to EPA pursuant to Section VIII (Notification) of this Consent Decree.

(c) TEPI shall obtain authorities to construct and permits to operate that require TEPI to achieve 99 percent control of VOC emissions from the tanks described in Paragraph 7, and to implement an LDAR program as provided in Paragraph 7(b). Within 10 business days after receipt of each permit, TEPI shall provide a copy of that permit to EPA pursuant to Section VIII (Notification) of this Consent Decree. TEPI shall implement the LDAR program within 60 days after issuance of a permit to operate requiring the program.

(d) By July 1, 2002, TEPI shall notify EPA and the District that it has installed and

completed operational "shakedown" activities for vapor controls to achieve 99 percent control of VOC emissions ("Paragraph 7(d) notice") from: (i) the two shipping tanks in Station 36; and (ii) all front line tanks with a capacity greater than 100 barrels at the Kern River Oil Field that accept crude oil produced from wells that are not equipped with well head casing vapor recovery, unless and to the extent that TEPI ceases to use such tanks in its operation prior to July 1, 2002. For those front line tanks that are subject to this subparagraph, TEPI shall notify EPA and the District within 30 days after ceasing to use each tank in its operation. The Paragraph 7(d) notice shall identify each steam generator or air pollution control device (collectively "Control Device") used to reduce the VOCs in the vapors collected from tanks subject to the requirements of this Paragraph 7. TEPI shall not designate an emergency flare as the Control Device.

(e) After TEPI has provided the Paragraph 7(d) notice to EPA and the District, the following requirements shall apply:

(1) Within 120 days of providing the Paragraph 7(d) notice, TEPI shall conduct a source test using EPA Method 18, 25, 25A, or 25B, as approved by the District, to measure VOC emissions from each Control Device identified in the Paragraph 7(d) notice. The source test shall be designed to determine whether the VOC emissions from the Control Device comply with the VOC emission limit in the permit to operate issued by the District for the Control Device. If the VOC emissions exceed the permit's VOC emission limit, TEPI shall: (i) use its best efforts to modify the Control Device to reduce VOC emission levels as soon as practicable after obtaining the source test results; and (ii) submit to EPA a report on its modification efforts within 30 days after obtaining the source test results. If TEPI's modification efforts have not been completed within that 30-day period, TEPI shall submit to EPA a proposal to make any further modifications to the Control Device that are necessary to achieve compliance with the VOC emission limit, but could not be made within the 30-day period. If EPA provides comments to TEPI, TEPI shall respond to EPA's comments within 10 days after receiving the comments. Within 60 days after the modifications have been completed, TEPI shall conduct a source test to measure the VOC emissions from the Control Device. TEPI's obligation under this Paragraph 7(e) to modify the Control Device and test the VOC emissions shall cease when a source test demonstrates that the VOC emissions from the Control Device comply with the permit's VOC emission limit.

(2) Within 30 days after the completion of the testing referred to in subparagraph (e)(1) of this Paragraph, TEPI shall provide a report describing the testing and its results to the District and to EPA in accordance with Section VIII (Notification) of this Consent Decree.

(3) No source test shall be required for vapors collected from tanks subject to this Paragraph 7 if the vapors collected from the tanks are: (i) combusted in an emergency flare in accordance with the conditions of a permit to operate issued by the District; (ii) injected into an underground injection well, as authorized by the California Division of Oil and Gas and Geothermal Resources; or (iii) injected into an oil field gathering line that leads to tanks equipped with vapor controls that achieve 99 percent control of VOC emissions. Vapors collected from tanks subject to this Paragraph 7 shall not be flared except during flare maintenance and testing periods, Breakdown Conditions, non-voluntary power interruptions, and other emergencies approved by the District Air Pollution Control Officer.

(f) By July 1, 2003, Texaco shall achieve 99 percent control of VOC emissions from: (i) all front line tanks with a capacity greater than 100 barrels at the Kern River Oil Field that accept crude

oil produced from wells that are not equipped with well head casing vapor recovery; and (ii) the two shipping tanks in Station 36. After July 1, 2003, TEPI shall not use tanks with a capacity greater than 100 barrels as front line tanks to accept crude oil from wells, or the two shipping tanks in Station 36, unless: (i) the tanks are equipped with vapor recovery that achieves 99 percent control of VOC emissions; or (ii) the wells are equipped with well head casing vapor recovery that achieves 99 percent control of VOC emissions.

(g) TEPI shall conduct emission testing for second line wash and settling tanks in Station 36 in accordance with the test protocol set forth in Attachment B to this Consent Decree. If the results of that testing, calculated in accordance with Attachment B, show total emissions from all of the second line wash and settling tanks greater than 142.8 lbs/day, TEPI shall equip each tank at Station 36 being used as a second line wash or settling tank with vapor controls that achieve 99 percent control of VOC emissions from the tank in accordance with the following schedule:

(1) Within 90 days after TEPI receives emission testing results showing that total emissions from all of the second line wash and settling tanks are greater than 142.8 lbs/day, TEPI shall submit a permit application to the District in accordance with SJVUAPCD requirements, seeking authorization to install vapor control devices to achieve 99 percent control of VOC emissions from each of the second line wash and settling tanks, and to implement an LDAR program as provided in Attachment A to this Consent Decree. A copy of TEPI's permit application shall be provided simultaneously to EPA pursuant to Section VIII (Notification) of this Consent Decree.

(2) TEPI shall obtain an authority to construct and permit to operate that require TEPI to achieve 99 percent control of VOC emissions from the second line wash and settling tanks, and to implement an LDAR program in accordance with Attachment A. Within 10 business days after receipt of each permit, TEPI shall provide a copy of that permit to EPA pursuant to Section VIII (Notification) of this Consent Decree. TEPI shall implement the LDAR program within 60 days after issuance of a permit to operate requiring the program.

(3) Within 20 months after TEPI receives emission test results, pursuant to Paragraph 7(g)(1), showing that controls are required on the second line wash and settling tanks, TEPI shall notify EPA and the District that it has installed and completed operational "shakedown" activities for vapor controls to achieve 99 percent control of VOC emissions from the second line wash and settling tanks. This Paragraph 7(g) notice shall identify each Control Device used to reduce the VOCs in the vapors collected from the second line wash and settling tanks subject to the requirements of this Paragraph 7. TEPI shall not designate an emergency flare as the Control Device.

(4) Within 120 days of providing the Paragraph 7(g) notice, TEPI shall conduct a source test using EPA Method 18, 25, 25A, or 25B, as approved by the District, to measure VOC emissions from each Control Device used to reduce the VOCs in the vapors collected from tanks subject to the requirements of this Paragraph 7. The source test shall be designed to determine whether the VOC emissions from the Control Device comply with the VOC emission limit in the permit to operate issued by the District for the Control Device. If the VOC emissions exceed the permit's VOC emission limit, TEPI shall: (i) use its best efforts to modify the Control Device to reduce VOC emission levels as soon as practicable after obtaining the source test results; and (ii) submit to EPA a report on its modification efforts within 30 days after obtaining the source test results. If TEPI's modification efforts have not been completed within that 30-day period, TEPI shall submit to EPA a proposal to make any further modifications to the Control Device that are necessary to achieve compliance with the

VOC emission limit, but could not be made within the 30-day period. If EPA provide comments to TEPI, TEPI shall respond to EPA's comments within 10 days after receiving the comments. Within 60 days after the modifications have been completed, TEPI shall conduct a source test to measure the VOC emissions from the Control Device. TEPI's obligation under this Paragraph 7(g) to modify the Control Device and test the VOC emissions shall cease when a source test demonstrates that the VOC emissions from the Control Device comply with the permit's VOC emission limit.

(5) Within 30 days after the completion of the testing referred to in subparagraph (g)(4) of this Paragraph, TEPI shall provide a report describing the testing and its results to the District and to EPA in accordance with Section VIII (Notification) of this Consent Decree.

(6) No source test shall be required for vapors collected from second line wash and settling tanks subject to this Paragraph 7 if the vapors collected from the tanks are: (i) combusted in an emergency flare in accordance with the conditions of a permit to operate issued by the District; (ii) injected into an underground injection well, as authorized by the California Division of Oil and Gas and Geothermal Resources; or (iii) injected into an oil field gathering line that leads to tanks equipped with vapor controls that achieve 99 percent control of VOC emissions. Vapors collected from second line wash and settling tanks subject to this Paragraph 7 shall not be flared except during flare maintenance and testing periods, Breakdown Conditions, non-voluntary power interruptions, and other emergencies approved by the District Air Pollution Control Officer.

(h) Notwithstanding the requirements of Paragraph 7(g), TEPI shall not be required to perform testing on the second line wash and settling tanks at Station 36 if TEPI informs EPA and the District in writing, within 60 days after the Effective Date of this Consent Decree, that it will, within 20 months after TEPI provides the notice, install and complete operational "shakedown" activities for vapor controls to achieve 99 percent control of VOC emissions from the second line wash and settling tanks, and implement an LDAR program in accordance with the provisions of Attachment A. If TEPI provides such notice, it shall be required to comply with Paragraph 7(g)(2), and shall be required to notify EPA and the District when it has completed the operational "shakedown" activities. Within 120 days after providing notice of the completion of operational "shakedown" activities, TEPI shall comply with the source test requirements of Paragraph 7(g)(4), and shall provide a copy of the report under Paragraph 7(g)(5) within 30 days after completing the source test.

(i) During the time that TEPI is installing the vapor recovery equipment required by this Paragraph 7, TEPI shall be allowed to operate all of its existing oil production and steam injection wells, and may continue to install new wells as permitted under the Authorities to Construct and Permits to Operate issued by the District for the Kern River Oil Field.

(j) From the Effective Date of this Consent Decree until the termination of the Consent Decree, TEPI shall submit to EPA pursuant to Section VIII (Notification) of this Consent Decree a semi-annual performance report on July 31 and January 31 of each year. The performance reports shall identify activities related to permitting, construction, and source testing that TEPI has undertaken in the previous six months to comply with the requirements of this Paragraph 7.

8. Compliance Plan for Midway-Sunset Oil Field: TCI shall comply with the following deadlines for installing, operating, and testing the control equipment at the Midway-Sunset Oil Field tank batteries located at Station 2-22, Station 109, the Star Lease, and the McDonald Lease.

(a) TCI has notified the District that it had installed and completed operational "shakedown" activities for vapor recovery equipment systems to achieve 95 percent control of VOC

emissions from tanks located at Star, McDonald, and Station 109. By April 30, 2001, TCI shall notify EPA and the District that it has installed and completed operational "shakedown" activities for vapor recovery equipment systems to achieve 95 percent control of VOC emissions from tanks located at Station 2-22. This Paragraph 8(a) notice shall identify each Control Device used to reduce the VOCs in the vapors collected from tanks subject to the requirements of this Paragraph 8. TCI shall not designate an emergency flare as the Control Device. Thereafter, the following requirements shall apply:

(1) Within 120 days of providing the Paragraph 8(a) notices, TCI shall conduct a source test using EPA Method 18, 25, 25A, or 25B, as approved by the District, to measure VOC emissions from each Control Device used to reduce the VOCs in the vapors collected from tanks subject to the requirements of this Paragraph 8. The source test shall be designed to determine whether the VOC emissions from the Control Device comply with the VOC emission limit in the permit to operate issued by the District for the Control Device. If the VOC emissions exceed the permit's VOC emission limit, TCI shall: (i) use its best efforts to modify the Control Device to reduce VOC emission levels as soon as practicable after obtaining the source test results; and (ii) submit to EPA a report on its modification efforts within 30 days after obtaining the source test results. If TCI's modification efforts have not been completed within that 30-day period, TCI shall submit to EPA a proposal to make any further modifications to the Control Device that are necessary to achieve compliance with the VOC emission limit, but could not be made within the 30-day period. If EPA provides comments to TCI, TCI shall respond to EPA's comments within 10 days after receiving the comments. Within 60 days after the modifications have been completed, TCI shall conduct a source test to measure the VOC emissions from the Control Device. TCI's obligation under this Paragraph 8(a) to modify the Control Device and test the VOC emissions shall cease when a source test demonstrates that the VOC emissions from the Control Device comply with the permit's VOC emission limit.

(2) Within 30 days after the completion of the testing referred to in subparagraph (a)(1) of this Paragraph, TCI shall provide a report describing the testing and its results to the District and to EPA in accordance with Section VIII (Notification) of this Consent Decree.

(3) No source test shall be required for vapors collected from tanks subject to this Paragraph 8 if the vapors collected from the tanks are: (i) combusted in an emergency flare in accordance with the conditions of a permit to operate issued by the District; (ii) injected into an underground injection well, as authorized by the California Division of Oil and Gas and Geothermal Resources; or (iii) injected into an oil field gathering line that leads to tanks equipped with vapor controls that achieve 95 percent control of VOC emissions. Vapors collected from tanks subject to this Paragraph 8 shall not be flared except during flare maintenance and testing periods, Breakdown Conditions, non-voluntary power interruptions, and other emergencies approved by the District Air Pollution Control Officer.

(b) By April 15, 2001, TCI shall submit permit applications to the District in accordance with SJVUAPCD requirements, seeking authorization to implement an LDAR program in accordance with the provisions of Attachment A to this Consent Decree. A copy of TCI's permit applications shall be provided simultaneously to EPA pursuant to Section VIII (Notification) of this Consent Decree.

(c) TCI shall obtain an authority to construct and permit to operate that require TCI to implement an LDAR program as provided in Paragraph 8(b). Within 10 business days after receipt of

each permit, TCI shall provide a copy of that permit to EPA pursuant to Section VIII (Notification) of this Consent Decree. TCI shall implement the LDAR program within 60 days after issuance of a permit to operate requiring the program.

(d) By April 30, 2002, TCI shall achieve 95 percent control of VOC emissions from Midway-Sunset Oil Field tank batteries located at Station 2-22, Station 109, the Star Lease, and the McDonald Lease.

(e) From the Effective Date of this Consent Decree until the termination of the Consent Decree, TCI shall submit to EPA pursuant to Section VIII (Notification) of this Consent Decree a semi-annual performance report on July 31 and January 31 of each year. The performance reports shall identify activities related to construction and source testing that TCI has undertaken in the previous six months to comply with the requirements of this Paragraph 8.

IV. STIPULATED PENALTIES

9. Late, Inaccurate, or Incomplete Notices or Reports: If Defendants fail to provide any notice or report required by this Consent Decree by the due date, Defendants shall pay a stipulated penalty of \$1,500 per day for each day that the notice or report is late. If Defendants provide any notice or report with inaccurate information, Defendants shall pay a stipulated penalty of \$1,500 per day for each day until a revised and corrected report is submitted to EPA. If Defendants provide any notice or report with incomplete information, Defendants shall pay a stipulated penalty of \$1,500 per day for each day until a revised and corrected report is submitted to EPA; provided, however, that no penalties shall accrue until 10 business days after TCI or TEPI receives EPA's notification that the required notice or report contains incomplete information.

10. Other Compliance Plan Requirements: For each failure to comply with any of the requirements of Paragraphs 7 and 8 (other than the notice and reporting requirements subject to Paragraph 9), Defendants shall pay a stipulated penalty for each violation as follows:

<u>Penalty per day, per violation</u>	<u>Number of days</u>
\$2,500	first through tenth
\$5,000	eleventh through twentieth
\$10,000	each day beyond twentieth

11. Late Payment of Civil Penalty: Defendants shall pay stipulated penalties of \$5,000 per day for failure to timely pay the civil penalty required by Paragraph 4.

12. Right of Entry: Defendants shall pay stipulated penalties of \$5,000 per day for failure to comply with the right of entry granted by Section V of this Consent Decree.

13. Except as otherwise provided in Paragraph 9, all stipulated penalties shall begin to accrue on the day after the complete performance is due or the day that a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Any stipulated penalty accruing pursuant to this Consent Decree shall be payable upon demand and due not later than 30 days from EPA's written demand. Stipulated penalties shall be paid in the same manner as set forth in Paragraph 5. The transmittal letter accompanying a payment of stipulated penalties shall provide the same information as the notice of payment under Paragraph 5.

14. If Defendants fail to pay stipulated penalties owed pursuant to this Consent Decree within 30 days of EPA's written demand, they shall pay interest on the late payment for each

day of late payment after the initial 30-day time period. The rate of interest shall be the most recent interest rate determined pursuant to 28 U.S.C. § 1961. If Defendants dispute the obligation to pay part or all of a stipulated penalty, they shall initiate the dispute resolution procedures under Section VII (Dispute Resolution). If Defendants invoke dispute resolution, Defendants shall pay to the United States any amount which they do not dispute.

15. Payment of stipulated penalties for a violation of this Consent Decree shall not preclude the United States from seeking additional monetary penalties or other relief in Court for the violations that led to stipulated penalties. In addition, the United States reserves its right to pursue any or all relief for any or all violations directly in the Court and outside the provisions of this Consent Decree.

V. RIGHT OF ENTRY

16. EPA and its contractors, consultants, and agents shall have authority to enter the Facilities at all reasonable times, upon proper presentation of credentials. This provision in no way limits or otherwise affects any right of entry held by EPA pursuant to applicable federal, state, or local laws, regulations, or permits.

VI. FORCE MAJEURE

17. Defendants shall satisfy the requirements of Paragraphs 7 and 8 except to the extent, and for the period of time, that such performance is prevented or delayed by events which constitute a force majeure.

18. For the purposes of this Consent Decree, a force majeure is defined as any event arising from causes beyond the control of Defendants and that cannot be overcome by Defendants' diligent and timely efforts. Economic hardship, normal inclement weather, and increased costs of performance shall not be considered events beyond the reasonable control of Defendants for purposes of determining whether an event is a force majeure.

19. In the event of a force majeure, the time for performance of the activity delayed by the force majeure shall be extended for the time period of the delay attributable to the force majeure. The time for performance of any activity dependent on the delayed activity shall be similarly extended, except to the extent that the dependent activity can be reasonably implemented in a shorter time. EPA shall determine whether dependent activities will be delayed by the force majeure and whether the time period should be extended for performance of such activities. Defendants shall adopt all reasonable measures to avoid or minimize any delay caused by a force majeure.

20. When an event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree and which Defendants believe is a force majeure, Defendants shall notify by telephone, (415) 744-1138, the Chief, Air Enforcement Office, Air Division of EPA, Region 9, within 72 hours of Defendants' knowledge of such event. Telephone notification shall be followed by written notification, made within seven (7) working days of Defendants' knowledge of the event. The written notification shall fully describe: the event that may delay or prevent performance; reasons for the delay; the reasons the delay is beyond the reasonable control of Defendants; the anticipated duration of the delay; actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay;

and the time needed to implement any dependent activities.

21. Defendants' failure to comply with the force majeure notice requirements provided in Paragraph 20 for any delay in performance will be deemed an automatic forfeiture of their right to assert that the delay was caused by a force majeure unless such failure to provide notice was caused by a force majeure.

22. Within seven (7) working days after receiving notice from Defendants of a force majeure, EPA shall provide written notification to Defendants stating whether Defendants' request for a delay is justified. EPA's failure to respond to a request for a delay shall be deemed a denial of that request. If Defendants disagree with EPA's determination, they may initiate dispute resolution procedures pursuant to Section VII (Dispute Resolution).

VII. DISPUTE RESOLUTION

23. If Defendants dispute any determination made by EPA under this Consent Decree related to (1) a request by EPA for stipulated penalties (including EPA's determination that Defendants have not complied with the requirements of this Consent Decree), (2) EPA's determination related to force majeure, or (3) the termination of the Consent Decree under Paragraph 35, Defendants shall send a written notice to EPA and DOJ outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond 10 working days from the date when the notice was sent unless the parties agree otherwise.

24. If the informal negotiations are unsuccessful, the determination of EPA shall control, unless Defendants file a motion with this Court for dispute resolution. Any such motion must be filed within 30 days after receipt by Defendants of a notice in writing terminating informal negotiations, and such motion must be concurrently sent to DOJ and EPA in accordance with Section VIII (Notification) of this Consent Decree. The United States shall then have 30 days to respond to Defendants' motion. In any such dispute resolution proceeding, Defendants bear the burden of proving, by a preponderance of the evidence, that (i) in disputes regarding EPA's request for stipulated penalties under Section IV, Defendants did not violate the terms and conditions of this Consent Decree; (ii) in disputes regarding Section VI (Force Majeure), the delay was caused by circumstances beyond the reasonable control of Defendants, their contractors, and agents, all reasonable measures were taken to avoid or minimize delay, and the duration of the delay was reasonable under the circumstances; and (iii) in disputes regarding termination of the Consent Decree under Paragraph 35, Defendants have satisfied all of their obligations under this Consent Decree.

25. A timely motion by Defendants will not toll the accrual of stipulated penalties under this Consent Decree for any ongoing noncompliance with respect to the disputed matter.

VIII. NOTIFICATION

26. Except as otherwise specifically stated, all notices and submissions from Defendants to EPA required by this Consent Decree shall be sent by certified mail, express mail, or similar overnight mail delivery service with return receipt requested and addressed to:

Director, Air Division (AIR-1)
Attn: Mark Sims, AIR-3

U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

All notices and reports submitted to EPA or DOJ shall refer to this Consent Decree and the date of entry of the Consent Decree, and shall cite the case name of United States v. Texaco California Inc. and Texaco Exploration and Production Inc., the case number, and DOJ #90-5-2-1-07326.

27. All submissions to EPA shall be signed and affirmed by responsible officials of the Defendants using the following certification statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on inquiry of those individuals immediately responsible for obtaining the information, I certify that the information is true, accurate, and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

28. Notice as required by this Consent Decree shall be submitted to:

U.S. Department of Justice:

Chief, Environmental Enforcement Section
U.S. Department of Justice
Attn: DOJ #90-5-2-1-07326 (Mullaney)
P.O. Box 7611
Washington, D.C. 20044

Texaco California Inc.,

G. Andrew Bressler

Texaco Exploration and Production Inc.:

Texaco California Inc.
Texaco Exploration and Production Inc.
5201 Truxtun Avenue
Bakersfield, CA 93309

with a copy to:

George E. Mittelholzer, Esq.
Texaco Legal Department
1111 Bagby, Room 3920
Houston, Texas 77002-2543

IX. MISCELLANEOUS

29. Entry of this Consent Decree and compliance with the requirements herein resolves the civil claims of the United States against TCI and TEPI for the violations alleged in the Complaint filed in this action. This Consent Decree resolves only those matters specifically alleged in the Complaint filed in this action, through the date of entry of the Decree.

30. Except as specifically provided herein, the United States does not waive any rights or remedies available to it for violation by Defendants of federal or state laws or regulations. This Consent Decree shall in no way affect the United States' ability to bring future actions for any matters not specifically alleged in the Complaint filed in this action, through the date of entry of the Consent Decree, and settled by this Decree. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve any criminal liability of Defendants.

31. Within 10 business days after the Effective Date of this Consent Decree, EPA will provide a letter to the CEC stating that the entry of this Consent Decree resolves the issues raised by EPA in its letter to the CEC dated January 11, 2000, and oral comments to the CEC on January 13, 2000, in connection with the permit application of Sunrise Cogeneration Company that was the subject matter of the administrative proceeding then pending before the CEC in Docket No. AFC-98-4.

32. This Consent Decree in no way affects Defendants' responsibilities to comply with all federal, state, or local laws and regulations.

33. Each party shall bear its own costs and attorney's fees in this action.

34. This Consent Decree contains the entire agreement between the parties. This Consent Decree may not be enlarged, modified, or altered unless such modifications are made in writing and approved by all parties and the Court.

35. This Consent Decree shall terminate according to the procedure provided in this Paragraph. After Defendants have complied with the requirements of Paragraph 4, Paragraphs 7 and 8, and Section IV (Stipulated Penalties), Defendants shall provide EPA notice, stating that Defendants have satisfied all obligations of the Consent Decree, and believe the Consent Decree can be terminated. Defendants' notice shall refer to this Paragraph 35. Within 60 days after receiving notice from Defendants, EPA will provide Defendants with a written response, either stating EPA's agreement that the Consent Decree is terminated, or stating EPA's determination that the Consent Decree should not be terminated. If EPA fails to provide a written response within 60 days after receiving written notice from Defendants or if EPA determines that the Consent Decree should not be terminated and so informs Defendants within 60 days, Defendants may initiate dispute resolution procedures pursuant to Section VII (Dispute Resolution). If EPA determines that the Consent Decree may be terminated, the United States will file a motion with the Court seeking termination.

36. The Court shall retain jurisdiction to resolve any disputes that arise under this Consent Decree, including any disputes pending at the time the Consent Decree is terminated.

37. Defendants agree and acknowledge that final approval of this Consent Decree by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Decree in the Federal Register, opportunity for public comment for at least 30 days, and consideration of any comments prior to entry of the Consent Decree by the Court. The United States reserves its right to withdraw consent to this Consent Decree based on comments received during the public notice period. Defendants consent to entry of this Consent Decree without further notice.

X. FINAL JUDGMENT

38. Upon entry by this Court, this Consent Decree shall constitute a final judgment for purposes of Fed. R. Civ. P. 54 and 58.